

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

RODNEY MARSHALL,
HCJ 0661104,

Plaintiff,

V.

ROBERT R. SCOTT, *ET AL.*,

Defendants.

CIVIL ACTION H-15-1564

Opinion on Dismissal

Rodney Marshall sues the lawyer who represented him in a criminal case and the prosecutor. Marshall says his lawyer rendered ineffective assistance of counsel and the prosecutor knew he was the victim of racial profiling. He claims civil rights violations under 42 U.S.C. § 1983. He seeks damages.

In a section 1983 case, the plaintiff must show that someone acting under color of state law has deprived him of a right under the Constitution or laws of the United States. *Baker v. McCollan*, 443 U.S. 137 (1979). An attorney representing a client is not acting under color of state law. *Briscoe v. LaHue*, 460 U.S. 325, 329 (1983). Prosecutors are absolutely immune from damages liability when acting in the scope of their duties in handling a criminal prosecution. *Imbler v. Pachtman*, 424 U.S. 409 (1976).

This court will not convert this complaint to a habeas corpus application because there is no showing that Marshall has exhausted his state court remedies. Marshall fails to state a claim recognized at law. 28 U.S.C. § 1915A(b)(1). This case will be dismissed. The clerk will send a copy to the District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702, Attention: Three Strikes List.

Signed June 19, 2015, at Houston, Texas.

Lynn N. Hughes
United States District Judge